

# EXHIBIT C (REDACTED)

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No.

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

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VIDEOTAPE DEPOSITION OF JOHN MACK

New York, New York

November 14, 2012

9:53 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27647-A

1 JOHN MACK

2 because I'm a Comcast customer. I have  
3 another one at Microsoft that's 33 Iron  
4 Mask Road, something like that.

5 I don't use any of them, I just  
6 have them.

7 Q. Okay. Now, what e-mail address  
8 did you use for correspondence, e-mail  
9 correspondence related to ResCap?

10 A. Only John\_E\_Mack.

11 Q. As a matter of practice, being a  
12 director of a number of boards, how do you  
13 deal with, in terms of maintaining, if you  
14 do, the hard copy and electronic materials  
15 you receive related to the various board  
16 positions you hold?

17 A. It varies with boards. One of  
18 my boards uses a service called Board  
19 Books to provide board information to the  
20 directors. Otherwise, I just use the MSN  
21 e-mail address, and I would have folders  
22 within the MSN e-mail address to store  
23 items related to a particular company.

24 Q. How about physical materials  
25 that are sent out, like board books and

1 JOHN MACK

2 things like that, what do you do with  
3 those?

4 A. Well, usually we get them at  
5 meetings, and I tend to just leave them at  
6 the meetings, so I don't have to carry  
7 them home.

8 Q. If they're sent to you in  
9 advance, what do you do with them?

10 A. I might still have them.

11 A lot of times I take the  
12 materials out and use the binders for  
13 other things.

14 Q. Do you maintain any type of  
15 notebook or diary?

16 A. No.

17 Q. Do you have a physical or  
18 electronic calendar?

19 A. Yes, I have, I use Outlook.

20 Q. And do you ever retain hard copy  
21 materials?

22 A. I won't say that I don't, but I  
23 generally speaking do not.

24 Q. Would you look at the subpoena  
25 which is Exhibit 91 in front of you, which

1 JOHN MACK

2 is the second document.

3 (9019 Exhibit 91, subpoena,  
4 marked for identification, as of this  
5 date.)

6 A. This document, yes.

7 Q. Did you understand that you were  
8 served a subpoena to appear today?

9 A. No, this is the first I heard  
10 about it.

11 Q. Did you make an effort to look  
12 for any of the documents that were called  
13 for by the subpoena?

14 A. I have been asked by the  
15 attorneys, do I have any documents, and I  
16 have responded to that that I don't.

17 But I was not aware of the  
18 subpoena per se, so.

19 Q. When you said you don't, you are  
20 saying you didn't have an e-mail file that  
21 related to your service on ResCap?

22 A. I usually delete the e-mails.

23 Q. I'm sorry, the question is, do  
24 you have an e-mail file --

25 A. Yes, I do.

1 JOHN MACK

2 Q. -- that relates to your service  
3 on ResCap.

4 A. Yes.

5 Q. And when did you delete the  
6 e-mails that were in that e-mail file?

7 MR. PIEDRA: Object to the form.

8 A. Well, I mean kind of as you go  
9 along.

10 Q. So you are saying it's a file  
11 that never has anything in it?

12 A. No, it has things in it. But,  
13 you know, a lot of it is just meeting  
14 notices and so on and so forth. When the  
15 meetings happened, I could delete it. I  
16 mean it's...

17 Q. Did you look at your computer  
18 and look at your, to see whether or not  
19 you had a file related to ResCap, in  
20 response to the subpoena?

21 A. No, because I didn't know I had  
22 the subpoena.

23 Q. Okay. So you've not searched  
24 your computer for that purpose; is that  
25 fair?

JOHN MACK

A. For that purpose, yes.

Q. Okay.

RQ MR. MOLONEY: We would call for  
a review of those documents and their  
production.

Q. Did you look in your, to see  
whether or not you had any hard copy  
materials related to ResCap in your home?

A. No.

Q. Because you didn't know that you  
were subject to a subpoena request to do  
so?

A. Correct.

Q. How are you compensated for your  
ResCap-related work?

A. There is a fixed fee retainer  
paid monthly. There are meeting  
attendance fees. There are fees for  
committee memberships. And then, of  
course, we are reimbursed for our direct  
expenses, travel expenses and so forth.

Q. Do you have any additional  
incentive arrangements concerning other  
compensation?

1 JOHN MACK

2 A. No.

3 Q. What type of insurance and/or  
4 indemnification arrangements are in place,  
5 related to your service on the ResCap  
6 board?

7 A. There is a D&O policy that all  
8 the board members have.

9 Q. Do you understand that you're,  
10 whether or not you are indemnified by Ally  
11 Financial, Inc. or AFI?

12 A. I believe they are part of the  
13 D&O policy.

14 Q. Do you understand whether or not  
15 you have an indemnity from them?

16 A. I believe we do, yes.

17 Q. Okay. If you look at, back at  
18 the prior exhibit.

19 A. Exhibit -- the first one?

20 Q. Exhibit 90.

21 A. Okay.

22 Q. This is an e-mail that relates  
23 to your appointment. And paragraph 2 at  
24 the bottom of the page says, "It will help  
25 insulate Ally Financial from liability for



1 JOHN MACK

2 indemnifying these individuals, if they  
3 are ever sued in connection with their  
4 services as directors on the ResCap  
5 board."

6 He's talking about basically  
7 employment being done by ResCap itself,  
8 rather than Ally, because it goes on to  
9 say, under the AFI bylaws, if AFI asks  
10 someone to serve, they're covered.

11 Do you know whether or not  
12 you've secured a request from AFI that  
13 requested you to serve?

14 MR. PRINCI: Objection as to  
15 form.

16 If you understand the question,  
17 you can answer it.

18 A. Yes. I understood that the Ally  
19 board approved, and I don't want to be too  
20 technical here, approved my service as a  
21 director. They are the shareholder, or  
22 were the shareholder at the time.

23 Q. So it would be your position  
24 that they actually, you are serving at the  
25 request of Ally Financial and subject to

1 JOHN MACK

2 Q. You may answer.

3 MR. PRINCI: You can answer, if  
4 you understand the question.

5 A. Yes, I knew that it was a  
6 difficult situation and that it would be  
7 challenging. But as I tell people, nobody  
8 invites me on the country club board. I  
9 get invited on the boards that need help.

10 Q. Help doing what, though?

11 A. Restructuring, if necessary,  
12 financial management, financing.

13 Q. Okay. I'd like to show you the  
14 next exhibit which is Exhibit 92.

15 (9019 Exhibit 92, 10/19/11  
16 e-mail from Michael Carpenter, Bates  
17 ALLY 0142018 through 022, marked for  
18 identification, as of this date.)

19 A. Okay.

20 Q. You are not shown as being  
21 copied on this, but it creates a timeline.  
22 It's an e-mail from Michael Carpenter  
23 dated Wednesday, October 19, 2011. And  
24 you see he says, "This letter is from the  
25 law firm and the lawyer that pursued BofA

1 JOHN MACK

2 and negotiated the \$8.5 billion  
3 settlement. Let the games begin."

4 And you see it attaches a letter  
5 from a woman by the name of Kathy Patrick.

6 A. Uh-hum.

7 Q. And so my question is, first,  
8 have you ever seen this e-mail or letter  
9 before?

10 A. No.

11 Q. Were you told, before joining  
12 the ResCap board, about Ms. Patrick's  
13 demand?

14 A. No.

15 Q. Were you told the games had  
16 begun?

17 A. No.

18 MR. PRINCI: Objection as to  
19 form.

20 Q. At what point after joining the  
21 ResCap board did you learn about this  
22 demand and about this issue?

23 A. Well, Ms. Patrick's name came  
24 up, it would have been in late April, mid  
25 to late April or early May of this year,

1 JOHN MACK

2 before the petition was filed.

3 Q. So between -- between  
4 October 19th, 2011, when this e-mail,  
5 which is Exhibit 92, is dated, and April  
6 or May, you never heard that there was a  
7 demand being made for a settlement of the  
8 RMBS claims?

9 MR. PRINCI: Objection as to  
10 form.

11 MR. PIEDRA: Objection to form.

12 A. Yeah, I think that's correct. I  
13 don't think I knew about it, other than,  
14 broadly speaking, that we would have been  
15 in conversations with some investors; but  
16 beyond that, no, nothing specific.

17 Q. When you say --

18 A. And nothing with her name  
19 attached it to until very late in the  
20 process.

21 Q. So you knew nothing specific and  
22 nothing with her name attached to it,  
23 until basically April, May; is that fair?

24 A. Correct.

25 Q. What did you know earlier than

1 JOHN MACK

2 that, and when?

3 A. About?

4 Q. About this general topic of  
5 potential settlement of the RMBS claims.

6 A. Very little about settlement of  
7 the RMBS claims. That they were out  
8 there, yes.

9 Q. Right. Okay. And so when did  
10 you first learn that there was a serious  
11 effort being made to try to settle those  
12 claims?

13 A. That would have been --

14 MR. PRINCI: Objection as to  
15 form.

16 A. -- in late April or May.

17 Q. Thank you.

18 Now, were you ever involved in  
19 any negotiations with Ms. Patrick  
20 concerning the RMBS settlement?

21 A. No.

22 Q. Have you ever spoken to  
23 Ms. Patrick?

24 A. I introduced myself at the  
25 bankruptcy court hearing, first day or

1 JOHN MACK

2 second day. I was introduced.

3 Q. So I take it it's fair to say  
4 you never directly participated in any of  
5 the negotiations of that settlement?

6 MR. PIEDRA: Objection to form.

7 A. That is correct.

8 Q. And did you indirectly  
9 participate in some way in those  
10 negotiations?

11 MR. PRINCI: Objection as to  
12 form.

13 A. No.

14 Q. Okay. When you learned about  
15 them in April or May, at that point it  
16 was -- is it fair to say, was it  
17 understood by the ResCap board that any  
18 resolution of these claims for a  
19 settlement would have to be accomplished  
20 in a Chapter 11 proceeding?

21 MR. PIEDRA: Object to the form.

22 A. They would have been part of the  
23 bankruptcy process. I think I can say  
24 that --

25 Q. Okay.

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JOHN MACK

A. -- from my standpoint as a director. I don't know what other members of the board thought.

Q. At that time you were already far along with something called Project Bounce, right?

A. Yes.

Q. And you had already been talking about DIP financing, and you had been talking about stalking horse bidders, right?

A. That's correct.

Q. So you understood this was going to be folded in, this was going to be part of a bankruptcy process, right?

A. It would have -- it was not certain until very close to the petition day. The sense that I had was that this was going to be difficult, if not, and was unlikely, until very close to the petition date, even though conversations had been going on.

Q. Okay. But if it happened, it was going to be part of the bankruptcy?

1 JOHN MACK

2 A. It was desirable. It would be  
3 desirable, but it was not thought likely,  
4 until very close to the petition date.

5 Q. Is it also fair to say that by  
6 April or May, based on the stalking horse  
7 bids you had received and the information  
8 you knew about ResCap's financial  
9 situation at that point in time, that you  
10 knew that, as a result of this bankruptcy  
11 process, it was at least unlikely that AFI  
12 would end up being a shareholder of ResCap  
13 on a go-forward basis?

14 MR. PRINCI: Objection as to  
15 form.

16 MR. PIEDRA: Objection to form.

17 MR. PRINCI: If you understand  
18 the question, you can answer.

19 A. By mid-April, yes, that was well  
20 understood.

21 Q. Right. And so would you agree  
22 with me that in such circumstances, that  
23 there was at least a risk that AFI might  
24 perceive its primary objective to be  
25 obtaining a release from the RMBS



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JOHN MACK

claimants, even if the price for such a  
release was a higher-than-justified claim  
against ResCap's subsidiaries?

MR. PRINCI: Objection as to  
form.

MR. PIEDRA: Objection to form.

Q. You may answer.

A. I don't know that.

Q. Well, if ResCap is going to have  
no continuing interest in the company,  
what interest would they have, as a result  
of the outcome of these --

MR. MOLONEY: Rephrase.

Q. If AFI is going to have no  
continuing interest in ResCap, what  
interest would they have, other than  
obtaining a release from a settlement with  
Ms. Patrick's group?

MR. PRINCI: Objection as to  
form.

MR. PIEDRA: Objection to form.

A. I can't speak for them, being  
AFI.

Q. Okay. Did the board take any

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JOHN MACK

steps to protect against the risk that I  
just identified?

MR. PIEDRA: Objection to form.

MR. PRINCI: Objection as to  
form.

A. Could you -- I'm not sure I  
understand your question.

Q. Okay. I identified what I  
believe is a risk, which is, which is that  
to the extent that AFI controlled the  
negotiations with Ms. Patrick, their  
primary objective would be to obtain a  
settlement, rather than a lower claim.  
And I'm asking whether the board took any  
steps to protect against that risk.

MR. PRINCI: Objection, assumes  
a facta not in evidence. Object to  
the form.

But if you understand the  
question, you may answer.

A. Well, I can't speak for AFI. I  
can only say that at ResCap, I didn't know  
AFI was having conversations with  
Ms. Patrick. I had no idea.

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JOHN MACK

Q. Now, what did you understand --  
who did you understand was the business  
person that was taking the leading role in  
the RMBS settlement negotiations with  
Ms. Patrick?

A. At ResCap, it would have been  
Tom Marano.

Q. Was your understanding that he  
was the one taking the lead in the  
negotiations?

A. No.

Q. Who did you understand was  
taking the lead in the negotiations?

A. Our advisors. In this case, it  
would have been people at, attorneys at  
MoFo.

Q. Okay. And what attorney?

A. I don't recall, specifically,  
but I would have to -- I would have to say  
Gary Lee, probably.

Q. Is it fair to say that you  
viewed MoFo and Gary Lee as the attorneys  
for ResCap?

A. Oh, they are.

1 JOHN MACK

2 Q. What about K&E and Timothy  
3 Devine, did you view them as your lawyers  
4 or as AFI's lawyers or something else?

5 MR. PRINCI: Objection as to  
6 form.

7 A. AFI's lawyers.

8 MR. PRINCI: Excuse me one  
9 second. Just pause for one second,  
10 Tom.

11 MR. MOLONEY: Wait a second.  
12 You can just tell them that he needs  
13 to wait -- I'll put it on the record  
14 that you need to wait to allow  
15 Mr. Princi to state his objection.

16 I think we should note now that  
17 counsel is conferring with the  
18 witness, and it's not appropriate.

19 Q. What did you understand Timothy  
20 Devine's position to be?

21 A. I don't know Timothy Devine.

22 Q. Okay. Do you know whether or  
23 not he had a role in negotiating the RMBS  
24 deal with Ms. Patrick?

25 A. No.

1 JOHN MACK

2 Q. Did it concern you, if he was  
3 the chief of litigation for AFI, and he  
4 took the lead in the settlement  
5 negotiations and negotiated material terms  
6 of the RMBS with Kathy Patrick, without  
7 the involvement of Morrison & Foerster?

8 MR. PIEDRA: Objection to form.

9 MR. PRINCI: Objection to form.

10 MR. MOLONEY: Noted.

11 Q. You may answer.

12 A. Generically speaking, yes, I  
13 would not understand that.

14 Q. As of May 2012, was there any  
15 real connection between the amount that  
16 the ResCap board was going to require AFI  
17 to contribute to a Chapter 11 resolution  
18 and the size of the RMBS claim that was  
19 negotiated with Ms. Patrick?

20 A. No.

21 Q. So at least as of May 2012,  
22 there was no additional cost to AFI in  
23 agreeing to a larger claim from  
24 Ms. Patrick's clients, in return for an  
25 AFI release, correct?

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JOHN MACK

MR. PIEDRA: Objection to form.

MR. PRINCI: Objection to form.

A. I'm not sure I understand. I'm not -- I'm ResCap, I'm not part of AFI. So I don't understand why -- I just don't understand.

Q. That's okay. Let's change topics.

As a member of the ResCap audit committee, what involvement, if any, did you have in reviewing AFI or ResCap group financial statements?

A. We met at least quarterly to review that quarter's financial statements.

Q. And I take it when you joined the board in 2011, ResCap was no longer filing public financial statements itself, correct?

A. Correct.

Q. It was still preparing financial statements, correct?

A. Correct.

Q. Was it preparing stand-alone

1 JOHN MACK

2 financial statements, as well as  
3 consolidated financial statements?

4 MR. PIEDRA: Object to the form.

5 A. We prepared consolidated ResCap  
6 financial statements.

7 Q. And was there also -- were  
8 stand-alone ResCap financial statements  
9 also prepared --

10 MR. PRINCI: Objection as to  
11 form.

12 Q. -- and reviewed by the board  
13 that showed nonconsolidated financial  
14 statements for just the parent company?

15 A. For just -- no, not to my  
16 knowledge.

17 Q. Okay.

18 A. They may be prepared, I just  
19 don't know.

20 Q. Okay. Did you also, in your  
21 capacity as a member of the ResCap audit  
22 committee or otherwise, review the  
23 publicly-filed financial statements of the  
24 parent company, AFI?

25 A. No.

1 JOHN MACK

2 Q. Okay. Now I'm going to ask you,  
3 you may not have seen it, but if you have,  
4 would you look at what we marked as  
5 Exhibit Number, what is it, 97?

6 MR. PIEDRA: 93.

7 MR. PRINCI: Tom, are you  
8 talking about this?

9 MR. MOLONEY: 93, yeah, 93.

10 (9019 Exhibit 93, Ally 10-Q,  
11 marked for identification, as of this  
12 date.)

13 Q. I'm just going to have -- first,  
14 you don't need to read the whole thing,  
15 but is this a document you would have  
16 reviewed, or no?

17 A. No.

18 Q. Okay. I'm going to focus you  
19 just on one page, which is at the end of  
20 the document which is page 73. Page 73.

21 A. Yes.

22 Q. Now, looking at page 73 you see  
23 the line that says "potential losses"?

24 A. Yes.

25 Q. Could you read that to yourself



1 JOHN MACK

2 for a moment.

3 MR. PRINCI: You are talking  
4 about the heading "Potential Losses"?

5 MR. MOLONEY: Yeah, the  
6 paragraph that follows.

7 Q. Just read it to yourself.

8 (Witness complies.)

9 A. Okay.

10 Q. Were you aware that something  
11 like this was being put in AFI's public  
12 financial statements?

13 A. Yes, this has been brought to my  
14 attention. I can't remember under what  
15 the context was.

16 Q. Okay. Now, do you know what  
17 work was done to create this zero to  
18 \$4 billion estimate?

19 A. No.

20 Q. Okay. Let's look at the next  
21 document, which is a document I think you  
22 would have been familiar with, which is  
23 the ResCap board materials.

24 (9019 Exhibit 94, ResCap audit  
25 committee minute dated 5/1/12, Bates

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JOHN MACK

RC 40022273 through 367, marked for  
identification, as of this date.)

Q. This is Exhibit 94. And this is  
a minute of the audit committee that  
occurred on May 1, 2002?

A. Uh-hum -- 2002?  
2012.

Q. 2012, thank you.

Now I'm going to focus in on the  
fourth page of the document, which is  
page number 2 of the audit committee.

First, did you attend this audit  
committee meeting?

A. Yes.

Q. You see the presentation of  
ResCap, "Reasonably possible range of  
loss"?

A. You are on which page?

Q. It's actually, starting from the  
front, go to the second page, the back of  
the second page. Page 2 of the  
presentation.

A. Yes, yes, I have it. Sorry.

Q. It's bearing Bates stamp number

1 JOHN MACK

2 RC 40022276.

3 So looking at that page, do you  
4 know why that was prepared for the audit  
5 committee at this point in time?

6 A. This page was an explanation of  
7 the changes in the reported reserve that  
8 had been in the financial statements.  
9 Well, it says "Third quarter 2011." And  
10 then this was going to be the number that  
11 was then in the 4 billion, the zero to 4  
12 billion change. This was the supporting  
13 document.

14 Q. So this was the supporting  
15 document for the AFI entry in their  
16 consolidated financial statements; is that  
17 fair?

18 MR. PRINCI: Objection as to the  
19 form.

20 A. Perhaps. Again, I'm focused  
21 more, as a director, I focused more on the  
22 ResCap number, as opposed to the AFI  
23 number.

24 Q. This number was really coming  
25 from ResCap, in terms of the R&W

1 JOHN MACK

2 liability, right?

3 A. Yes. And if it ends up in AFI,  
4 that's one thing; but I'm focused on it as  
5 a ResCap number.

6 Q. Right. I take it you both used  
7 Deloitte as your accountants, that's both  
8 boards?

9 A. I don't know who they used. We  
10 used Deloitte.

11 Q. And this is giving you a range.  
12 Basically, the range of liability could be  
13 somewhere between 829 million, and outside  
14 range is going to be \$4 billion; is that  
15 fair?

16 A. Yes.

17 Q. And it says in footnote C, you  
18 see that? It says, "Estimated lifetime  
19 losses multiplied by risk funds' audit  
20 defect rate and adjusted for litigation  
21 defense."

22 That's how they computed the  
23 exposure behind 2013, of potentially  
24 1.255 billion, do you see that?

25 A. Yes.

1 JOHN MACK

2 Q. Can you tell us what they used  
3 as the audit defect rate?

4 A. No, I cannot tell you. From  
5 this schedule, I cannot tell you.

6 Our defect rate was a range of  
7 something like 9 to 29 percent.

8 Q. Okay. And there's a reference  
9 to adjusted for litigation defenses.

10 Do you know what litigation  
11 defenses are being referred to there?

12 A. No.

13 Q. Did you ever get an explanation  
14 as to what the litigation defenses were to  
15 this claim?

16 A. I don't recall.

17 Q. You don't recall ever receiving  
18 an explanation about the defenses to this  
19 claim?

20 MR. PRINCI: Objection, asked  
21 and answered.

22 You can answer again.

23 A. I don't specifically recall a  
24 number being attached to it.

25 Q. I'm not asking for a number.

1 JOHN MACK

2 I'm asking, did you ever get an  
3 explanation of what litigation defenses  
4 might be available to ResCap to defend  
5 against these potential claims?

6 MR. PIEDRA: Object to the form.

7 A. No.

8 Q. For example, were you ever  
9 informed that a number of the claims could  
10 be eliminated, due to statute of  
11 limitations defenses?

12 MR. PRINCI: Just to the extent  
13 that you were informed of any such  
14 thing by counsel, then I'm going to  
15 direct you not to answer.

16 MR. MOLONEY: Okay. I'm just  
17 withdrawing my question. We will go  
18 on to another area.

19 Q. Now, if we look at the -- before  
20 we leave this page, if we look at the  
21 number 400, that's -- this estimate  
22 includes securities litigation, right?

23 A. Yes, it says so.

24 Q. Okay. Thank you.

25 And now, going on in the same

1 JOHN MACK

2 MR. PIEDRA: Objection as to  
3 form.

4 MR. PRINCI: Misstates the  
5 facts.

6 A. Yes. I was going to say no,  
7 that's not the liability to ResCap.

8 Q. Isn't that the amount that  
9 ResCap is agreeing to pay, the settlement  
10 plan the ResCap group is agreeing to pay  
11 \$8.7 billion to settle the claim?

12 MR. PRINCI: Objection as to  
13 form.

14 A. That is correct, they are  
15 agreeing to pay that.

16 Q. Right. And why -- if their  
17 maximum exposure could only be \$4 billion,  
18 why would they agree to pay 8.7 billion?

19 MR. PRINCI: Objection as to  
20 form.

21 A. I don't know that the 4 -- the 4  
22 billion is not the maximum, that's just an  
23 estimate. This number is supposed to be,  
24 it is negotiated; it is a cap, in essence.

25 Q. Okay. You are saying the

1 JOHN MACK

2 \$4 billion was an estimate, but this was a  
3 negotiated number, the 8.7?

4 A. Correct.

5 Q. Now, it wasn't determined by a  
6 court that ResCap was liable for \$8.7  
7 billion, right?

8 A. That is correct.

9 Q. So it was just determined by two  
10 human beings who negotiated a number, \$8.7  
11 billion, right?

12 MR. PRINCI: Objection as to  
13 form.

14 A. It was a negotiated number.

15 Q. Who were the two people who  
16 negotiated the number?

17 MR. PRINCI: Objection as to  
18 form.

19 A. Our advisors from MoFo, and  
20 Kathy Patrick, representing the investors.

21 Q. Now, the person who was  
22 representing you, your advisor for MoFo,  
23 you would think that they should negotiate  
24 a number that's consistent with what they  
25 think are their potential liabilities, if



1 JOHN MACK

2 they go to court, right?

3 MR. PIEDRA: Objection to form.

4 MR. PRINCI: Objection as to  
5 form.

6 A. No.

7 Q. No? Why?

8 A. They can negotiate a number that  
9 is in the best interests of trying to get  
10 a transaction accomplished.

11 Q. Even if it doesn't bear any  
12 resemblance to what the outcome would be,  
13 if the case was actually tried in court?

14 MR. PIEDRA: Objection to form.

15 A. I don't know that it would or  
16 wouldn't bear any resemblance to what the  
17 actual number would be. I couldn't  
18 predict the future like that.

19 Q. Did you get any guidance at the  
20 board meeting as to what the number would  
21 be, if this claim was actually litigated  
22 rather than settled?

23 A. No, not that I recall.

24 Q. So this was just a number needed  
25 to do a transaction, is what you are

1 JOHN MACK

2 saying, like an M&A deal?

3 MR. PIEDRA: Objection to form.

4 MR. PRINCI: Objection as to

5 form.

6 A. No.

7 Q. How was it different?

8 A. It was different, because we  
9 were, we thought the number was -- well,  
10 it was, by evidence, lower than two other  
11 settlements, one of which Ms. Patrick had  
12 been engaged with. That was the Bank of  
13 America. And it was within the range of  
14 defects that we his -- we, ResCap,  
15 historically had. It was kind of the  
16 midpoint of that range. So in a market  
17 sense, it seemed to be a reasonable  
18 number.

19 Q. Other than those two criteria,  
20 were there any other criteria that you  
21 relied on, in terms of approving the  
22 settlement?

23 MR. PIEDRA: Object to the form.

24 MR. PRINCI: Objection as to

25 form.

1 JOHN MACK

2 A. Not that I recall at the time.

3 Q. Okay. Let's see if we can  
4 understand whether it's lower than the  
5 BofA settlement.

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 Q. Okay. And now, when we looked  
15 at Exhibit -- the prior exhibit, there was  
16 also a further discount of the number for  
17 legal defenses.

18 Do you recall seeing that?

19 A. Uh-hum, uh-hum.

20 Q. Was a legal defense discount  
21 applied to the number that's on this page?

22 MR. PIEDRA: Object to the form.

23 A. Not that I recall.

24 Q. Okay. So no consideration of  
25 legal defenses?

1 JOHN MACK

2 MR. PIEDRA: Objection to form.

3 MR. PRINCI: Objection.

4 A. No, I don't think that was part  
5 of what my consideration was.

6 Q. Now, you say it was less than  
7 the BofA settlement; is that what you are  
8 telling us?

9 A. The defect rate, our defect  
10 rate.

11 Q. I know your defect rate. But  
12 the settlement amount actually was,  
13 ironically, more than the BofA settlement,  
14 right?

15 MR. PIEDRA: Objection to the  
16 form.

17 Q. BofA settled for \$8.5 billion,  
18 we saw in the prior exhibit.

19 MR. PIEDRA: Do you want an  
20 answer to the last question?

21 MR. PRINCI: Which question do  
22 you want him to answer?

23 Q. The settlement amount proposed  
24 to be paid by ResCap is actually more than  
25 the amount proposed to be paid by BofA to

1 JOHN MACK

2 settle its claims, correct?

3 MR. PIEDRA: Objection to form.

4 MR. PRINCI: Objection as to

5 form.

6 A. The BofA defect rate was higher.

7 That's what I was looking at.

8 Q. Putting aside -- that's not my  
9 question.

10 Did you hear my question?

11 MR. PRINCI: You asked a  
12 multiple number of questions.

13 MR. MOLONEY: I did not, I asked  
14 one question.

15 Q. You may answer it.

16 A. I'm not sure I see on this  
17 schedule what the BofA settlement number  
18 was.

19 Q. Well, if you go back to the  
20 prior -- you have an exhibit in your pile  
21 that says that, for Michael Carpenter, the  
22 one we looked at earlier. It says BofA  
23 negotiated the \$8.5 billion settlement.

24 Do you recall seeing that?

25 A. In this room?

1 JOHN MACK

2 Q. Yeah.

3 A. Yes.

4 Q. You know that as a matter of  
5 just public knowledge, that BofA  
6 settlement was for \$8.5 billion, right?

7 MR. PRINCI: Objection to form.

8 Q. You don't? You don't keep up  
9 with your old bank?

10 A. I actually don't.

11 Q. Okay, fair enough.

12 Now, it has a number here, next  
13 to BofA, of \$15 billion. BofA is --  
14 assume it's correct, it's \$8.5 billion.

15 BofA is not settling its claim  
16 for \$15 billion, right?

17 MR. PIEDRA: Objection to form.

18 MR. PRINCI: Objection as to  
19 form.

20 A. I don't know.

21 Q. Take it as a given with the 8.5.  
22 So the \$15 billion number, what does that  
23 represent?

24 MR. PRINCI: Objection as to  
25 form.

1 JOHN MACK

2 A. I'm assuming that is 36 percent  
3 times a protected loss number.

4 Q. Now, do you know whether or not  
5 the BofA settlement bore any resemblance  
6 to what you call the defect rate here, or  
7 is there any correlation between the  
8 defect rate and the amount that BofA  
9 actually paid to settle its lawsuit?

10 MR. PIEDRA: Objection to form.

11 MR. PRINCI: Objection as to  
12 form.

13 A. The answer is no.

14 Q. You don't know?

15 A. No.

16 Q. If there was no correlation  
17 between the amount that BofA paid to  
18 settle its lawsuit and the defect rate,  
19 then this chart is basically useless,  
20 right?

21 MR. PIEDRA: Objection to form.

22 MR. PRINCI: Objection as to  
23 form.

24 A. I don't know. I don't  
25 understand that.

1 JOHN MACK

2 It's not useless, but...

3 Q. Well, let's take it logically,  
4 okay. The fact that there's a defect in a  
5 mortgage doesn't mean that the mortgage is  
6 actually -- there's going to be a loss  
7 associated with the mortgage, correct?

8 A. That is correct.

9 Q. And even if there's a loss  
10 associated with the mortgage and there's a  
11 defect, doesn't necessarily mean that  
12 ResCap is going to be liable to buy it  
13 back, right?

14 MR. PRINCI: Objection as to  
15 form.

16 Q. They could have legal defenses,  
17 statue of limitations, causation, right?

18 MR. PRINCI: Objection as to  
19 form.

20 Which question are you asking,  
21 the first one or the second one?

22 Q. The fact that there's a loss  
23 associated with the mortgage, which is a  
24 defect, doesn't necessarily mean that  
25 there's a liability to a ResCap group,



1 JOHN MACK

2 with respect to that mortgage, to buy it  
3 back, correct?

4 MR. PRINCI: Objection as to  
5 form.

6 Q. You may answer.

7 A. We could be obligated to buy it  
8 back. Depends on the agreements.

9 Q. Correct, you may or may not be,  
10 right?

11 A. Right.

12 Q. I'm saying on the information  
13 you have here, you can't draw any  
14 correlation between defect rate and what  
15 your liability is. There's no correlation  
16 between those two variables, right?

17 MR. PIEDRA: Objection to form.

18 MR. PRINCI: Objection as to  
19 form.

20 A. Well, the defect rate -- we have  
21 a historical defect rate which is, created  
22 actual losses.

23 Q. Okay. Let me try it a different  
24 way.

25 Do you know BofA actually issued

1 JOHN MACK

2 twice the amount of bonds that ResCap did  
3 and the amount of home loans it had  
4 outstanding was a number that was twice as  
5 large as ResCap?

6 MR. PIEDRA: Objection to form.

7 MR. PRINCI: Objection as to  
8 form.

9 Q. Did you know that?

10 A. No.

11 Q. Okay. Assume, for purposes of  
12 my question, that that's a fact, okay?

13 A. Okay.

14 Q. And assume that their defect  
15 rate is twice as -- for purposes of  
16 analysis, it's almost as twice as high as  
17 ours, right? ResCap's, right?

18 MR. PRINCI: Objection as to  
19 form.

20 Q. Assume that, right?

21 A. Yes.

22 Q. They should have paid an amount  
23 twice as large as ResCap, then, to settle  
24 their liability, right?

25 MR. PRINCI: Objection as to

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JOHN MACK

form.

Q. It's a matter of logic, right?

MR. PRINCI: Objection as to  
form.

A. I'm not sure that -- it would  
have been negotiated. I'm not sure that  
all the facts are totally comparable in  
every respect, so.

Q. Sitting here today, do you  
really feel that you can draw any comfort  
from the fact that the defect rate was  
35 percent for BofA, to justify the  
settlement that occurred here?

MR. PIEDRA: Objection to the  
form.

Q. What comfort do you get to  
justify your settlement from the fact that  
BofA settled for a different amount of  
money involving a different amount of  
bonds with a higher defect rate? What  
comfort do you get that that supports your  
settlement?

MR. PIEDRA: Objection.

MR. PRINCI: Hold on. There's

1 JOHN MACK

2 three questions in sequence.

3 Which one do you want him to  
4 answer?

5 MR. MOLONEY: I'll rephrase.

6 Q. Assume BofA settled for a  
7 different amount of money than ResCap, had  
8 a larger amount of bonds, had a  
9 significantly larger amount of lifetime  
10 losses and was using a larger defect rate.  
11 And assume further that the amount of  
12 money was smaller, by BofA.

13 Why would that support this  
14 settlement?

15 MR. PRINCI: Objection as to  
16 form.

17 MR. PIEDRA: Objection as to the  
18 form.

19 A. I'm not sure that it would.  
20 I was looking primarily at  
21 whether this number made sense for us, and  
22 I thought that it did.

23 Q. Why?

24 A. It seemed to be --

25 MR. PRINCI: Objection, asked

1 JOHN MACK

2 and answered.

3 You may answer again.

4 A. It seemed to be, given our  
5 defect rate, it was within -- it was the  
6 average of our range of defect rates times  
7 our projected estimated lifetime losses.

8 MR. PRINCI: Tom, just --

9 Q. If you took that same analysis,  
10 and BofA had a larger set of estimated  
11 lifetime losses, if I were to tell you  
12 that the estimated lifetime losses for  
13 BofA were substantially higher than --

14 If I were to tell you, based on  
15 ResCap's own expert, the estimated  
16 lifetime losses for BofA were a number  
17 between \$61 billion and \$76.8 billion and  
18 that, as a percentage, its settlement of  
19 lifetime losses was between 11.1 to 13.9,  
20 while the percentage pursuant to lifetime  
21 losses of the ResCap settlement was  
22 between 17 and 19 percent, why would you  
23 draw any comfort from that?

24 MR. PIEDRA: Objection to form.

25 MR. PRINCI: Objection as to

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JOHN MACK

form.

A. Again, I think it's very difficult to compare to BofA, in some respects, because of their portfolio having been originated largely by the company they acquired.

Q. BofA had actually a worse portfolio than ResCap, right?

MR. PIEDRA: Objection to form.

MR. PRINCI: Objection as to form.

A. I would suspect so, but I don't have facts. I'm not...

Q. And the Lehman analysis, do you know whether Lehman has actually settled any claims on the basis of a 35 percent defect rate?

A. No, I do not.

MR. MOLONEY: Okay, you can take a break now.

MR. PRINCI: Thank you.

THE VIDEOGRAPHER: The time is 10:52 a.m. and we are off the record.

(Whereupon, there was a recess

1 JOHN MACK

2 in the proceedings.)

3 THE VIDEOGRAPHER: The time is  
4 11:04 a.m. and we are back on the  
5 record.

6 Q. Are you ready, Mr. Mack?

7 A. Yes.

8 Q. Okay. Good. Looking still at  
9 95. I want to go on to under the key  
10 assumptions, the first key assumption,

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 Do you see that sentence?

17 A. Yes.

18 Q. Okay. Who negotiated that  
19 number, the 1 million -- 1 billion 50  
20 million dollar number?

21 MR. PRINCI: Objection as to  
22 form.

23 A. The Ally settlement was  
24 primarily Jonathan Ilany and myself. But  
25 at this point this was an assumption.

1 JOHN MACK

2 This was not an actual number. It was not  
3 a fact.

4 Q. Okay. Did this represent the  
5 settlement that was negotiated between you  
6 and -- who represented Ally in the  
7 negotiations or AFI?

8 MR. PRINCI: Objection. You got  
9 two questions again, Tom.

10 Q. Let me ask the question who  
11 represented AFI in the negotiation of the  
12 settlement?

13 A. Mike Carpenter and Lenard  
14 Tessler.

15 Q. And just for the record, who are  
16 they?

17 A. Mike Carpenter is the CEO.  
18 Lenard Tessler is with Cerberus and I  
19 believe is the director of AFI.

20 Q. And you are saying this  
21 assumption number is not the same as the  
22 number that you negotiated by way of the  
23 settlement; is that correct?

24 A. At this point in time it was  
25 still an assumption. We did not have an



1 JOHN MACK

2 agreement.

3 Q. Okay. At this point in time  
4 what would have been the ask. What were  
5 you and Mr. Ilany asking for on behalf  
6 of -- of ResCap?

7 MR. PRINCI: Objection as to  
8 form.

9 A. I think that what I would say is  
10 that we were still in negotiation and that  
11 as opposed to having -- calling it an ask,  
12 let us say that I was -- my argument was  
13 that it needed to be a headline number  
14 that came in at about this range, about  
15 this size, to be credible. Now, you can  
16 call that an ask but I wasn't phrasing it  
17 as an ask.

18 Q. Okay. Now, I want to break that  
19 down. The headline number around this  
20 size, the "this" is referring to the  
21 billion 50?

22 A. About a billion. I wouldn't  
23 have been as precise as a billion 50.

24 Q. And when you say in order for it  
25 to be credible, credible to whom and based

1 JOHN MACK

2 on what?

3 MR. PRINCI: Objection as to

4 form.

5 A. The overall idea here is that we  
6 were trying to do a more elegant, if  
7 that's a good word, bankruptcy. That we  
8 were trying to put together a package that  
9 included a plan, a contribution from Ally,  
10 a DIP financing, stalking horse bids, a  
11 transaction -- a deal with -- with the  
12 RMBS trustees so that we had a package  
13 that would accrete value to the process  
14 and ultimately to the creditors.

15 Q. Okay. And one element of that  
16 package was the -- was the Ally  
17 contribution, fair to say?

18 A. Correct.

19 Q. Now, in terms of -- in terms of  
20 how you figured out what the right amount  
21 for Ally to bid, what criteria -- to pay,  
22 what criteria did you use?

23 A. Well, I don't know that I would  
24 phrase it that way. It was a negotiation.

25 Q. What was the rationale for the

1 JOHN MACK

2 payment?

3 A. Well, on our side we, we the  
4 estate, would be getting cash. And on  
5 their side they would be getting releases.

6 Q. Okay. Okay. And specifically  
7 what -- what claims of what ResCap  
8 entities and end creditors -- I want -- I  
9 want to get a list of what ResCap entity  
10 claims and what -- and what individual  
11 creditor claims were valued for purposes  
12 of this exercise by you?

13 MR. PRINCI: Objection as to  
14 form.

15 A. I think I'm answering your  
16 question here, I'm not sure. I was  
17 working in a consolidated sense not in any  
18 specific debtor. There are a number of  
19 subsidiaries in ResCap. I was thinking of  
20 this as a consolidated effort for ResCap.

21 Q. Well, did you give any  
22 consideration to the unique claims that  
23 the company which you were a director of  
24 might have against -- against AFI?

25 MR. PRINCI: Objection as to

1 JOHN MACK

2 form.

3 A. I think, again, it was a  
4 consolidated thought process not a thought  
5 process of this particular legal entity  
6 against another company.

7 Q. Okay. What about in terms of  
8 the claims of individual creditors that  
9 were going to be settled by, as a part of  
10 this process, how did you value those?

11 MR. PRINCI: Objection as to  
12 form.

13 A. I was aware that there were a  
14 number of different classes of creditors.  
15 However, my thought process was to try to  
16 be as comprehensive as I could in terms of  
17 the amount of money we raised in the  
18 process without specific regard to any  
19 class of creditor.

20 Q. Okay. Without getting into a  
21 specific entity what were the -- what were  
22 the specific claims that you thought  
23 against AFI that you thought had value  
24 that they were paying to resolve, if any?

25 MR. PRINCI: Just want to make

1 JOHN MACK

2 sure that if your answer comes from  
3 advice of counsel, I don't want you to  
4 share anything that's solely based on  
5 advice of counsel otherwise you can  
6 answer.

7 THE WITNESS: It pretty much is  
8 based on advice of counsel.

9 A. It was the result of a meeting  
10 in which we received a presentation by  
11 counsel as to the types of claims they  
12 thought they could bring.

13 Q. Okay. And beyond whatever you  
14 got in terms of types of claims at that  
15 meeting, was that the complete universe of  
16 claims that you had in your arsenal when  
17 you went to negotiate with Mr. Carpenter  
18 or did you think of additional claims or  
19 learn of other claims other than what you  
20 got at that meeting?

21 A. There would not have been --  
22 that was a comprehensive presentation. So  
23 I would say there was nothing that would  
24 have been outside of that presentation.

25 Q. Now, when you joined the ResCap

1 JOHN MACK

2 board, did you note that it had public  
3 debt outstanding?

4 A. Yes.

5 Q. Do you know about almost a  
6 billion dollars of unsecured notes were  
7 outstanding at ResCap LLC?

8 A. No.

9 Q. Do you know that now?

10 A. I know we had some, yes.

11 Q. Did you feel that you had a  
12 fiduciary -- when you were negotiating  
13 this deal, did you feel you had a  
14 fiduciary duty to those noteholders?

15 A. Specifically those noteholders?

16 Q. Yes.

17 A. No.

18 Q. Did you feel you had a specific  
19 duty specifically to creditors of the  
20 entity which you were a director of?

21 A. Again, I was not -- I was  
22 looking at it on a consolidated basis and  
23 not on a legal entity basis. The debt --  
24 the debt that is on the balance sheet of  
25 ResCap is on a deconsolidated basis with

1 JOHN MACK

2 several of our subs and with the parent  
3 company.

4 Q. But as a director of ResCap LLC  
5 wasn't it your primary duty to direct  
6 creditors of ResCap LLC?

7 MR. PRINCI: Objection as to  
8 form.

9 Q. You may answer.

10 A. I viewed our responsibility to  
11 the consolidated group, ResCap and its  
12 subsidiaries.

13 Q. Okay. In terms of thinking of  
14 claims, did you think of -- were you  
15 informed about a claim based on a breach  
16 of the indenture related to the unsecured  
17 notes, you can just answer yes or no,  
18 based on the sale of substantially all of  
19 the assets of ResCap LLC?

20 MR. PRINCI: I'm going to direct  
21 him not to answer. I think his  
22 earlier testimony was that his  
23 understanding of claims was  
24 comprehensive --

25 MR. MOLONEY: He can answer was

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JOHN MACK

he aware of this claim, he can say yes  
or no. I'm not asking for any legal  
advice.

MR. PRINCI: That would indicate  
information that was transmitted to  
him by counsel because he's testified  
that his basis for this came from  
counsel. So I'm instructing him not  
to answer that. But you can explore  
anything he said with the  
counterparty. Maybe it comes out that  
way.

Q. All right. When you met with  
Mr. Carpenter to negotiate this deal, what  
was your opening ask?

A. We did not make an opening ask.

Q. What did you tell him you wanted  
him to pay?

MR. PRINCI: Objection as to  
form.

A. At the meeting in which we  
started this conversation Mr. Carpenter  
made a presentation and we listened,  
Jonathan and I listened. We did not



1 JOHN MACK

2 counter. We did not negotiate in that  
3 meeting.

4 Q. Okay. Let's see if we can put a  
5 time and place on this meeting.

6 MR. MOLONEY: Do we have this?

7 Is this part of the exhibits?

8 Q. Would you look at Exhibit 98 in  
9 your pile.

10 (9019 Exhibit 98, meeting  
11 minutes, Bates RC40020213-214, marked  
12 for identification, as of this date.)

13 A. Uh-hum.

14 MR. PRINCI: Excuse me. Just  
15 give me one second. Bear with me.  
16 Okay, Mr. Moloney.

17 Q. Did you attend this meeting on  
18 or about January 25, 2012?

19 A. Yes, I did.

20 Q. And did you -- if you look at  
21 the minutes of meeting there's a reference  
22 under Executive Session to the fact that  
23 there's a presentation given to the ResCap  
24 board essentially about potential claims  
25 against Ally and an indication of certain

1 JOHN MACK

2 materials to provide to the board in  
3 advance of the meeting.

4 Do you see that?

5 A. Yes.

6 Q. Did you obtain those materials?

7 A. If they were provided to the  
8 board I did.

9 Q. Did you keep those materials?

10 A. No.

11 Q. What did you do with them?

12 A. I left them in the board room.

13 Q. You left them in the board room  
14 when you left the meeting?

15 A. Yes.

16 Q. On a go-forward basis when you  
17 were negotiating with Mr. Carpenter did  
18 you need to consult the materials from  
19 time to time?

20 A. No.

21 Q. Is it fair to say your  
22 negotiations with Mr. Carpenter really had  
23 nothing to do with the legal arguments in  
24 those materials?

25 MR. PRINCI: Objection as to

1 JOHN MACK

2 form.

3 A. Yes. I'm not going to negotiate  
4 on legal issues.

5 Q. Okay. And then there's a  
6 reference here to a meeting that occurs  
7 with Mr. Carpenter right after this board  
8 meeting. This board meeting starts at  
9 12:25 and there's a reference to a meeting  
10 with Mr. Carpenter right after it, right?  
11 It says approximately 3:00 the meeting was  
12 adjourned. At approximately --

13 A. Yes, I see that.

14 Q. Half hour meeting with  
15 Carpenter. Is that the meeting -- does  
16 that kick it off, the process of these  
17 negotiations?

18 A. No.

19 Q. Okay. When was the kick-off  
20 meeting?

21 A. It was after this.

22 Q. Okay. I'm going to show you a  
23 document which we have marked as  
24 Exhibit 99.

25 (9019 Exhibit 99, series of

1 JOHN MACK

2 e-mails, Bates ALLY 0142489; 0142535;  
3 0142547; 0142563-565, marked for  
4 identification, as of this date.)

5 Q. Take a look at 99. It's just a  
6 series of e-mails that indicate setting up  
7 various meetings between yourself and  
8 Mr. Ilany and Mr. Mack. And the reason  
9 I'm just doing this is if it's helpful to  
10 you in terms of the timeline. If it  
11 doesn't help you -- but that's what we  
12 found in terms of timeline.

13 A. Uh-hum.

14 Q. But can you tell us when  
15 approximately the meeting, the first  
16 kick-off meeting was that you had with  
17 Mr. Mack to discuss -- with Mr. Carpenter  
18 rather, to discuss the Ally contribution?

19 A. Well, I would have said March or  
20 April. And I think that's about when we  
21 started. As I say, it was after the  
22 January meeting.

23 Q. There's one of the documents  
24 refers to an April 4th -- if you look at  
25 the third one in, it might be on the third

1 JOHN MACK

2 tab in, refers to a meeting confirmation  
3 on April 4, 2012, in this building  
4 actually on the 16th floor?

5 A. Yes.

6 Q. Is that the kick-off meeting?

7 MR. PRINCI: Excuse me one  
8 moment, Mr. Moloney. What Bates  
9 number is --

10 MR. MOLONEY: Ally 014457.

11 MR. PRINCI: Just give me a  
12 moment. I'm sorry. Go right ahead.

13 Q. Is that the kick-off meeting?

14 A. I don't recall. And I'm not  
15 sure that this is clear enough for me to  
16 say that it absolutely was the kick-off  
17 meeting.

18 Q. But it's approximately around  
19 this time period?

20 A. Yes.

21 Q. And did the meeting actually  
22 take place in this building?

23 A. Yes.

24 Q. Okay. You don't need to look at  
25 that any more then. Tell me best your

1 JOHN MACK

2 Q. Now, the proposal. What was the  
3 numbers that he gave?

4 A. As I recall, he had a three --  
5 \$350 million number. And again, there  
6 were some ancillary items which in our  
7 view ultimately didn't really have  
8 value -- add value, so.

9 Q. Did you take notes at this  
10 meeting?

11 A. Probably not.

12 Q. Did you report what was, what  
13 you learned at the meeting to the other  
14 directors or anyone else?

15 A. Yes.

16 Q. And in what format?

17 A. Verbal conversation with our  
18 attorneys at MoFo.

19 Q. So you reported verbally to the  
20 attorneys at MoFo. Anything else?

21 A. Well, Mr. Ilany was with me so  
22 the two of us made the report. We walked  
23 back up the street to MoFo's office to do  
24 that.

25 Q. And were the other directors

1 JOHN MACK

2 present so that they heard the  
3 presentation?

4 A. No.

5 Q. So how did other directors learn  
6 about the status at that point?

7 MR. PRINCI: Objection as to  
8 form.

9 Q. If they did.

10 A. Well, we would have discussed it  
11 at a subsequent meeting of the directors.  
12 I should have added we regularly had  
13 director, independent director meetings  
14 with our independent counsel. And so that  
15 would have been a possible timeline. But  
16 it was done -- we did communicate  
17 verbally. I never put anything in  
18 writing. I don't believe Jonathan did  
19 either.

20 Q. Were you told not to put  
21 anything in writing?

22 A. No.

23 Q. Now, you said you didn't make a  
24 counter at this meeting; is that correct?

25 A. That's correct.

1 JOHN MACK

2 Q. So what -- what happens next?

3 MR. PRINCI: Objection as to  
4 form.

5 A. We discussed the proposal.

6 We -- there were -- again there was some  
7 items in the proposal that he made that  
8 were of no value as we -- as we viewed the  
9 situation. And so at a subsequent meeting  
10 Jonathan and I went back. Again, it was  
11 the same four principals and only the four  
12 principals. We went back with a  
13 counterproposal seeking to emphasize that  
14 we liked and preferred the third  
15 alternative, that is I'm going to use the  
16 word "elegant," the more elegant process,  
17 involving a plan.

18 Q. And what was your  
19 counterproposal?

20 A. Well, we wanted -- we pointed  
21 out why we didn't contribute or didn't  
22 assign value to certain parts of his  
23 proposal. We discussed the need to have  
24 a, you know, reasonable but I don't  
25 believe we were specific as to number, a



1 JOHN MACK

2 reasonable headline number in terms of  
3 achieving credibility. And we then  
4 encouraged, the four of us, encouraged the  
5 advisors who were actually sitting in the  
6 next room to work on an agreement that  
7 mirrored that.

8 Q. Now, what did you say in terms  
9 of the -- the reasons for a reasonable  
10 headline number? What reasons did you  
11 give to them in support of why it was in  
12 their reason for a reasonable headline  
13 number?

14 A. Well, it would have been very  
15 simple. If the plan was going to have any  
16 credibility at all, then we needed a  
17 reasonable headline number. Otherwise  
18 we'd just get mired into a process which  
19 isn't going anywhere and which would in  
20 fact not ascribe value to the estate and  
21 to the creditors.

22 Q. Okay. Now when you instructed  
23 the lawyers to -- to work on an agreement  
24 they weren't supposed to be working on the  
25 numbers, they were just working on the

1 JOHN MACK

2 mechanics of implementing the deal, right?

3 A. Yeah. We were trying to direct  
4 them to the idea that we were going to go  
5 for a plan as opposed to a free fall 363  
6 or something like that.

7 Q. What was -- what was his  
8 response to your request?

9 A. It was positive.

10 Q. And did you reach an agreement  
11 on a reasonable headline number at that  
12 meeting?

13 A. No.

14 Q. Or a range of reasonable  
15 headline numbers?

16 A. No, no.

17 Q. So what happened next in terms  
18 of these negotiations?

19 A. There would have been subsequent  
20 phone calls between the principals or  
21 among the principals to try to advance the  
22 ball.

23 Q. Okay. And did you have those  
24 calls?

25 A. I had calls with Mike Carpenter.

1 JOHN MACK

2 And Jonathan had the calls with Lenard  
3 Tessler. There were times when I was not  
4 available and Jonathan would be on lead.  
5 And there would have been times when  
6 Jonathan was not available and I would be  
7 on lead.

8 Q. How did you get Carpenter and he  
9 got Tessler? Did you flip a coin or  
10 something else?

11 MR. PRINCI: Objection as to  
12 form.

13 A. I don't know.

14 Q. So was -- take me through toward  
15 when you think that this kind of came  
16 together in a kind of a meeting of the  
17 minds.

18 MR. PRINCI: Objection as to  
19 form.

20 A. It would have been in late  
21 April. And I pinpoint the time because I  
22 was traveling and I was dealing with this  
23 while riding in a shuttle the last weekend  
24 of April 2012, the last weekend. And it  
25 was awkward because I couldn't -- I could

1 JOHN MACK

2 not be on the phone because it's a public  
3 shuttle. And so I was texting. And the  
4 deal had gotten a little off track and I  
5 had to bring it back.

6 Q. How did the deal -- how had the  
7 deal gotten off track?

8 A. Well, in an effort to bridge a  
9 difference of economics of about \$150  
10 million, the advisors had proposed that  
11 each of three parties, that is Ally,  
12 ResCap and our leading stalking horse  
13 bidder at the time, Nationstar, each  
14 contribute not cash necessarily but in  
15 value 50 million each for a total of 150.  
16 That was not consistent with the  
17 understanding that Mike and I had  
18 discussed. So he got in touch with me and  
19 I got back to the lawyers and said no,  
20 that that was not the deal. This is the  
21 deal. Tom Marano -- I copied Tom on the  
22 e-mail. He confirmed that that was the  
23 deal, what I said, and that put people  
24 back on track.

25 Q. What involvement, if any, did

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JOHN MACK

Tom Marano have in these discussions?

A. None. Other than we would talk to Tom about it. But he was not involved in the conversation.

Q. Now, you say they had to bridge a \$150 million gap. What was the gap at that point in time? What was the bid and the ask at that point in time?

A. Well, it would have been around, you know, in the 750 to billion dollar or billion 1 range. That would have been the range. But obviously The Gap would be a little narrow. But they were still -- we were still working on some of the fine points. So we were in that range.

Q. Where did you end up in terms of a number or a range? Where did you end up in terms of --

A. Where did we end up?

Q. Yeah.

A. 750 of cash and then there were a couple of other components, some financing, some loan sales. So in total it was around a billion dollars.

1 JOHN MACK

2 Q. So that was the headline number  
3 you were looking for a billion dollars, is  
4 that fair?

5 A. Yes. Yes.

6 Q. Okay. Just going back to the  
7 May 9 board meeting again. That's  
8 Exhibit --

9 A. The which one?

10 Q. The May 9 board meeting which is  
11 Exhibit --

12 MR. PRINCI: 95?

13 Q. -- 95. When -- when -- when  
14 you -- I take it the board approved this  
15 deal at this board meeting, is that fair?

16 A. Yes.

17 Q. And they approved the billion 50  
18 Ally settlement?

19 A. That was not brought up at the  
20 May 9 board meeting to my knowledge.

21 Q. Well, it's part of the package  
22 right here.

23 A. It's part of the key  
24 assumptions.

25 Q. You are saying that wasn't --

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JOHN MACK

that wasn't approved, that was just an  
assumption?

A. That's correct.

[REDACTED]

MR. PRINCI: Objection as to  
form.

A. I actually don't know.

Q. Were you involved in negotiating  
the allocation?

A. No.

Q. Who negotiated the allocation?

MR. PRINCI: Objection as to  
form.

A. I don't know.

Q. Has that been approved by the  
board, the allocation?

A. Well, are you talking about  
subsequent to the filing of the petition?

Q. Well, at this point in time  
let's say was it approved?

A. No.

1 JOHN MACK

2 Q. At any point in time did they,

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 to the Holdco, the company you were a  
7 director of?

8 A. No.

9 Q. So you don't think that  
10 allocation has ever been approved by the  
11 board as we are sitting here today?

12 MR. PRINCI: Objection. Asked  
13 and answered.

14 You can answer again.

15 A. There have been two amendments  
16 to the agreement with the RMBS trustees.  
17 The first agreement, which was deemed to  
18 be administerial and therefore not  
19 approved by the board, did have an  
20 allocation to Holdco.

21 The second agreement, which is  
22 the one that is currently in place,  
23 specifically excludes an allocation to  
24 Holdco.

25 Q. I think we are talking about



1 JOHN MACK

2 apples and oranges. Let's see if we can

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 A. Okay.

8 Q. So just kind of retrace it.

9 A. To my knowledge, no part of the  
10 Ally settlement has been allocated to  
11 anybody.

12 Q. You certainly as a board didn't  
13 make a judgment that -- that weighing the  
14 relative merits of the claims of -- that  
15 belonged to ResCap LLC versus other claims  
16 that might belong to other entities that

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 MR. PRINCI: Objection as to  
21 form.

22 Q. You didn't make that judgment,  
23 right?

24 A. We did not make that judgment.

25 Q. Now, did you understand that as

1 JOHN MACK

2 part of the settlement that was approved,  
3 the \$8.7 million settlement, that you were  
4 also settling securities claims?

5 A. Yes, it was reps and warranties  
6 and securities claims.

7 Q. At any point in time did you  
8 ever learn that securities claims were not  
9 being picked up by this \$8.7 billion  
10 settlement?

11 A. No.

12 Q. So as far as you are concerned,  
13 the board has not approved the deal that  
14 does not resolve securities claims as part  
15 of the \$8.7 billion payment?

16 MR. PRINCI: Objection as to  
17 form.

18 A. This is a slightly technical  
19 matter. I don't know.

20 Q. Okay.

21 (9019 Exhibit 100, e-mail with  
22 attachment, Bates RC 40088324-337,  
23 marked for identification, as of this  
24 date.)

25 Q. Please look at Exhibit 100 in

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JOHN MACK

your pile. Is this a document you've seen before?

A. Yes.

Q. Why did you ask for this to be prepared?

A. I was trying to understand --

MR. PRINCI: Just can you -- I need to consult with my partner for a second. Jamie, you got a moment? Excuse me before you go on. Excuse me one moment.

MR. MOLONEY: Why don't we just go off the record for a second.

THE VIDEOGRAPHER: The time is 11:37 a.m. We're off the record.

(Brief recess.)

THE VIDEOGRAPHER: The time is 11:42 a.m. and we are back on the record.

A. I was trying to understand the deconsolidated liability structure of ResCap. The schedule that I had really asked for was labeled page 8 -- is labeled page 8. And that's the one I actually

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JOHN MACK

focused on. They gave me a lot of other  
schedules, pages, in this process that I  
didn't really go through.

Q. Okay. We will go to that in a  
minute. But before we get to page 8 I  
have a couple of questions on -- on page  
5. And it says, "The assumptions  
presented below are consistent with the  
assumptions used for recovery presented in  
the FTI's board presentation dated  
4/4/12" -- do you see that? -- "with the  
exception of removing all intercreditor  
settlement assumptions."

Do you see that?

A. And where are you reading?

Q. At the top of page 5. Just  
so -- just so we can all locate ourselves.

A. Yes. Dated 4/4? I'm sorry. I  
thought I heard you say something  
different.

Q. Okay.

A. Yes, I see that.

Q. Now, look at what they have  
under Ally settlement. They have a

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JOHN MACK

"payment of a billion dollars of cash;  
assumption or payment by Ally of up to  
\$400 million regulatory costs; value of  
\$500 million provided by Ally via TSA  
subservicing and parent financing;  
purchase by Ally through credit bid of the  
assets secured by Ally revolver facility."

Do you see those items?

A. Yes.

Q. What do they represent?

MR. PRINCI: Objection as to  
form.

A. What do they represent. Well,  
again, these were conceptual ideas of what  
might be in a settlement with Ally. We  
had not finalized it at this point.

Q. Had Ally provided any indication  
it was willing to do a settlement of this  
magnitude at this point in time?

A. Oh, no. No.

Q. Was this a proposal that you  
were making at this point in time?

A. We never made this as a  
proposal.

1 JOHN MACK

2 Q. Where did FTI get the -- get the  
3 idea of this -- of this to include in this  
4 chart?

5 MR. PRINCI: Objection as to  
6 form.

7 A. We discussed it internally but  
8 we never made this as a proposal.

9 Q. And why not?

10 MR. PRINCI: Objection as to  
11 form.

12 A. I don't recall.

13 Q. Did you ask for more or less?

14 MR. PRINCI: Objection as to  
15 form.

16 A. Well, these are different --  
17 these are different items. For instance,  
18 the second one, assumption of payment by  
19 Ally of up to 400 million of regulatory  
20 costs. This related to the obligations  
21 under the DoJ, AG, Fed settlement. We --  
22 we were concerned about the actual amount  
23 of costs. And so that was where that --  
24 that was where that concept came from.

25 Q. I know. Was it -- was it -- did

1 JOHN MACK

2 you make that request to AFI, did they  
3 pick up those costs?

4 A. I don't know that we made the  
5 400 million. We did -- we did discuss  
6 whether they should pick up the regulatory  
7 costs.

8 Q. What did they say?

9 A. Well, they probably said no.  
10 But then, again, we just racked it into  
11 the overall settlement.

12 Q. The overall settlement doesn't  
13 pick up this payment, right?

14 A. Doesn't specify that payment.

15 Q. And it's for less than a billion  
16 dollars in cash, right?

17 A. I'm sorry, yes.

18 Q. And you don't get the value of  
19 the \$500 million provided by the Ally  
20 value that's listed here until this deal  
21 is actually consummated?

22 A. Well, we do have a transaction  
23 services agreement and we do have  
24 subservicing. Whether you would assign  
25 500 million to it or not is different.

1 JOHN MACK

2 Q. You wouldn't -- you wouldn't  
3 assign a 500 million value, right?

4 MR. PRINCI: Objection as to  
5 form.

6 A. I don't think it was that much.

7 Q. No. And they didn't purchase  
8 through credit bid the assets secured by a  
9 revolver, right?

10 A. No. In the end we did a  
11 different structure. Those were assets  
12 that went to -- they did provide -- I'm  
13 sorry, they did provide a revolver as part  
14 of the facility. They just didn't  
15 purchase the assets necessarily.

16 Q. Now, did Mr. Marano indicate  
17 around this point in time that he thought  
18 \$2 billion was required as the headline  
19 number to resolve this problem?

20 A. I'm sorry, I didn't hear you.

21 Q. Did Mr. Marano indicate to you  
22 that he thought at around this point in  
23 time April of 2012 that he thought  
24 \$2 billion was the headline number that  
25 the settlement needed to have in order to



1 JOHN MACK

2 have credibility?

3 A. I don't think I would  
4 characterize it that way but I do believe  
5 that he said, I know that he said  
6 \$2 billion but I don't believe I would  
7 characterize it that he said that's what  
8 it would need to be.

9 Q. How would you characterize it?

10 A. That it would be desirable.

11 Q. And did you disagree with him?

12 A. No. I didn't disagree with him.

13 Q. Why did you agree with a  
14 settlement that was worth less than half  
15 that amount?

16 A. Well, I didn't -- just because I  
17 didn't disagree with him doesn't mean I  
18 don't think that the number we got was the  
19 fair number. I think -- I think his  
20 number was -- could also be deemed to be  
21 fair. But I'm not saying that that was  
22 the only number that it could be.

23 Q. Okay. There's a discussion down  
24 here that the reps and warranties claims  
25 were estimated at 4.1 billion. Do you see

1 JOHN MACK

2 that?

3 A. Yes.

4 Q. And was that -- was that the  
5 estimate that was given by FTI to the  
6 board in April 2012 or did that number  
7 come from somewhere else?

8 MR. PRINCI: Objection as to  
9 form.

10 A. I don't -- I don't know  
11 specifically what the source of that  
12 number was.

13 Q. I'd like to look at Exhibit 101.

14 (9019 Exhibit 101, e-mail from  
15 Michael Carpenter dated April 12,  
16 2012, Bates ALLY 0142576, marked for  
17 identification, as of this date.)

18 Q. This is an e-mail from Michael  
19 Carpenter dated April 12, 2012, to a  
20 Caribel Ortiz-Zorn with a couple of people  
21 copied. And it refers to a conversation  
22 that he purportedly had with you that day.  
23 So could you read it to yourself, please.

24 A. (Witness complies.)

25 Uh-hum.

1 JOHN MACK

2 Q. Now, do you recall there being a  
3 meeting on or about April 11th where  
4 Mr. Marano was present with Mr. Mack and  
5 you were present?

6 A. No.

7 Q. Regardless of the date --

8 A. I don't -- the reason I'm -- is  
9 whether I was present. Tom and Mike could  
10 have had a meeting. I would not have been  
11 present necessarily.

12 Q. What do you understand he's  
13 talking about --

14 MR. PRINCI: Objection as to  
15 form.

16 Q. -- in this e-mail, if you do?

17 A. I don't, specifically, recall.

18 Q. Do you recall, were you ever  
19 present at a meeting where -- where  
20 Mr. Marano said that the proposal being  
21 made by -- by -- by AFI was -- was an  
22 opening low ball?

23 A. No.

24 Q. Was there -- were you at a  
25 meeting where you thought Mr. Marano

1 JOHN MACK

2 30, 2012, Bates RC40020521-567, marked  
3 for identification, as of this date.)

4 Q. Did you attend this board  
5 meeting?

6 A. Yes.

7 Q. Now, if you look at the back of  
8 the document, I'm just going to focus on  
9 one document, which is a settlement  
10 agreement in the back of this package.  
11 Apparently it was part of the board  
12 package. And if you look at the black  
13 line document, you see under Ally  
14 contribution, which is page 6 of the black  
15 line document.

16 A. Yes.

17 Q. You see 750 is crossed out and  
18 850 is inserted?

19 A. Yes.

20 Q. And this is at -- as of  
21 April 30th. How did the 850 number get  
22 moved down from 850 to 750?

23 MR. PRINCI: Objection as to  
24 form.

25 A. Well, the 850 number was our

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JOHN MACK

effort to get a greater contribution from  
Ally. They never agreed to it.

Q. You are saying when the 850 was  
actually put in the agreement and 750 was  
crossed out and delivered to the board  
meeting there was at that point there was  
no agreement to pay 850?

MR. PRINCI: Objection as to  
form.

A. That is correct. The 850 was a  
number that perhaps Jonathan had, but I'll  
take the credit for it or blame for it.  
It was our effort to get more money. It  
was never an agreement with Ally that it  
would be 850.

Q. Look at Exhibit 102 in your  
pile.

(9019 Exhibit 102, e-mail  
string, RC 901900062398-400, marked  
for identification, as of this date.)

Q. You are not copied on this.

A. Okay. I got 102.

Q. It's an e-mail from Tim

Devine --

1 JOHN MACK

2 A. Okay.

3 Q. -- to Tammy Hamzephour.

4 A. Uh-hum.

5 Q. I think you indicated you don't  
6 know who Tim Devine is?

7 A. I have never met Tim Devine.

8 Q. Were you aware that he was a,  
9 the head of litigation for AFI?

10 MR. PRINCI: Objection. Asked  
11 and answered.

12 You can answer again.

13 A. No. I -- I -- I'm not sure I  
14 can tell you what he was or is.

15 Q. And you know who Tammy  
16 Hamzephour is, right?

17 A. I do know Tammy, yes.

18 Q. It says "Prep for KP," I think  
19 that probably means Kathy Patrick. But in  
20 any event, looking down it says in the --  
21 this is dated April 23. It says, in the  
22 second paragraph it says, "Finally I  
23 recommend we use 750 rather than 1 billion  
24 as potentially AFI contribution. I don't  
25 have a basis to say it should be a

1 JOHN MACK

2 billion, and we better leave some room for  
3 negotiation. If we want to use a billion,  
4 we will need clearance from AFI and I  
5 haven't spoken to Mike."

6 Do you see that?

7 A. Yes.

8 Q. Now, was Kathy Patrick  
9 recommending -- negotiating the AFI  
10 contribution or were you negotiating it?

11 MR. PRINCI: Objection as to  
12 form.

13 A. I thought I was.

14 Q. Okay.

15 A. I'm unaware of this.

16 Q. This seems to imply that they  
17 would have gone up higher if Kathy Patrick  
18 had asked for more, doesn't it?

19 MR. PRINCI: Objection as to  
20 form. Lack of foundation.

21 A. I -- I don't know.

22 Q. The language it would be better  
23 to have some room for negotiation implies  
24 that you are giving an offer less than  
25 your bottom line, right?

1 JOHN MACK

2 MR. PRINCI: I'm not going to  
3 let you argue with him on this stuff.

4 MR. MOLONEY: He may answer.

5 MR. PRINCI: No, I'm going to  
6 direct him not to answer. Stop  
7 arguing with him.

8 Q. You may answer.

9 MR. PRINCI: Don't answer the  
10 question. Ask an intelligent question  
11 where you are not arguing with him.

12 Q. At this point in time, as of  
13 April 23, hadn't there been an agreement,  
14 general agreement, that they would put a  
15 billion dollars on the table to settle the  
16 ResCap situation?

17 MR. PRINCI: Objection as to  
18 form.

19 A. I don't think so.

20 Q. Okay. But you are not sure?

21 A. That's correct.

22 Q. Okay. I'd like to look at  
23 Exhibit 104.

24 (9019 Exhibit 104, two e-mails,  
25 Bates ALLY 0226069, marked for



1 JOHN MACK

2 identification, as of this date.)

3 Q. And this is two e-mails. The  
4 first is dated May 5, 2012. It's from  
5 Darren M. Nashelsky to Ray Schrock at  
6 Kirkland & Ellis and there's a response  
7 from Kirkland & Ellis dated the same day,  
8 from Mr. Schrock the same day. You got to  
9 read the bottom first and then read the  
10 top to follow the chain.

11 A. Yes.

12 Q. Now, as of this point in time,  
13 May 5, had the contribution been fixed  
14 that was going to be paid by AFI?

15 A. I honestly can't tell you  
16 whether it was May 5 or a little bit later  
17 or a little bit earlier but it was all  
18 within the range of, you know, 750 to 850.  
19 That's the number here. I'm not sure why  
20 that's the way it is.

21 Q. Do you know, and I'm not sure  
22 you would know, but if you do know, tell  
23 us, do you know whether it was K&E who was  
24 turning the drafts of the settlement  
25 agreement as opposed to MoFo?

1 JOHN MACK

2 A. No, I don't recall.

3 Q. Do you know why Marano would  
4 feel that he would need an explanation as  
5 to what the amount was at that point in  
6 time?

7 MR. PRINCI: Objection as to  
8 form. Lack of foundation.

9 A. No.

10 Q. Let's go to exhibit, next  
11 exhibit which is exhibit --

12 A. 105?

13 Q. Yes.

14 (9019 Exhibit 105, two e-mails,  
15 Bates ALLY 0141967, marked for  
16 identification, as of this date.)

17 A. Uh-hum.

18 Q. It's an e-mail, two e-mails the  
19 top one is from Dan Soto dated May 8,  
20 2012. The bottom one is from Jeff Brown  
21 dated May 8, 2012. And I want to focus on  
22 the penultimate paragraph of the e-mail,  
23 of the bottom e-mail from Jeff Brown. It  
24 says "Also I think, even as Mike once  
25 shared to you and Jim, originally ResCap

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JOHN MACK

presented an 8 or \$9 billion claim against  
Ally that is now totally gone."

Do you see that statement?

A. Yes.

Q. What knowledge, if any, do you  
have of an 8 to \$9 billion claim that  
ResCap presented to Ally?

A. I would have to speculate that  
in an early meeting between MoFo and K&E,  
that that would have been a number that we  
presented them.

Q. Did MoFo -- did you ever present  
an 8 or \$9 billion ask?

A. Did I? No.

Q. Why not?

MR. PRINCI: Objection as to  
form.

A. These are legal matters. I'm  
not going to discuss legal matters with  
principals.

Q. Okay. So you weren't settling  
legal claims?

A. No.

MR. PRINCI: Objection as to

1 JOHN MACK

2 form. Asked and answered.

3 Q. Thank you. Okay. Now --

4 MR. MOLONEY: Why don't we take  
5 a short break.

6 THE VIDEOGRAPHER: The time is  
7 12:05 p.m. and we are off the record.

8 (Whereupon, there is a recess in  
9 the proceedings.)

10 THE VIDEOGRAPHER: The time is  
11 12:13 p.m., and we are back on the  
12 record.

13 Q. Would you look at Exhibit 108 in  
14 your pile, please.

15 (9019 Exhibit 108, e-mail, Bates  
16 RC 901900093502 through 503, marked  
17 for identification, as of this date.)

18 A. Yes.

19 Q. It's an e-mail from Jamie  
20 Levitt, copying a bunch of people. And  
21 she's talking about a second amendment to  
22 the settlement agreement. This is a topic  
23 we covered, I think very briefly, earlier.

24 A. Yes.

25 Q. And in paragraph 1 it says --

1 JOHN MACK

2 MR. PRINCI: This is an e-mail  
3 from Jamie Levitt?

4 MR. MOLONEY: Yes.

5 MR. PRINCI: Sorry. Got it.

6 Q. Paragraph 1 you say, "We cannot  
7 agree to your addition of additional  
8 debtors to the allowed claim. Our deal is  
9 that the allowed claim is against GMACM  
10 and ROC. We allocated the settlement  
11 based on origination, and it can dilute  
12 and alter recoveries, if we give the  
13 allowed claims as you proposed."

14 Do you see that?

15 A. Yes.

16 Q. That's consistent with your  
17 understanding as well, is that the deal,  
18 the initial deal as done, was that there  
19 was not going to be any of the R&W claims  
20 allocated to the holding company that you  
21 were a director of, right?

22 MR. PRINCI: Objection as to  
23 form, lack of foundation.

24 A. Yes. The Holdco was not going  
25 to be engaged.

1 JOHN MACK

2 Q. And did you ever approve a  
3 change to that original deal?

4 A. This was the change that we  
5 approved. There was a previous amendment  
6 which, as I say, was deemed administerial,  
7 we did not approve.

8 Q. You say the board actually  
9 approved the change to eliminate the -- to  
10 assume the liability for Holdco?

11 A. Yeah. Because, again, it was a  
12 capped claim of 8.7 billion. They were  
13 released, Holdco was both released and  
14 wasn't going to be engaged in the process.

15 So, yeah, that was the  
16 recommendation of our advisors, both sets  
17 of legal advisors, both the MoFo team and  
18 the Morrison & Cohen team.

19 Q. At what point in time did this  
20 happen?

21 A. I believe our approval, we had a  
22 meeting, and we approved this in  
23 September.

24 Q. In September of, of this year?

25 A. 2000 -- yes.

1 JOHN MACK

2 Now, that's why this, the date  
3 on this e-mail makes me question whether  
4 this was the final.

5 Q. Okay. You approved the final  
6 deal?

7 A. We approved the final deal. We  
8 didn't approve any interim deals.

9 Q. There was an interim deal that  
10 provided for a Holdco, eliminated your  
11 release and provided for a Holdco  
12 election, a potential claim of  
13 \$1.7 million?

14 A. I don't recall.

15 Q. You didn't approve that deal?

16 A. I don't recall.

17 Q. Why did you approve any change  
18 from the original deal that allowed ResCap  
19 LLC to obtain a release?

20 MR. PRINCI: Objection as to  
21 form.

22 A. Again, you are into a little bit  
23 of a legal issue, and I relied on my  
24 advisors with regard to the legal issues.  
25 The economics didn't seem to change, to

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JOHN MACK

me.

Q. Well, from the perspective --  
going back to the exhibit we looked at  
earlier, the May 9th exhibit. Can you  
pull that up again?

A. May 9th?

Q. Yeah.

A. What exhibit?

MR. PRINCI: Which exhibit  
number?

MR. MOLONEY: It's the board  
meeting. It's Exhibit Number 95.

A. Okay, I have 95.

Q. Look at the executive summary,  
key assumptions.

Do you see that?

A. Yes.

[REDACTED]



[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

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Q. Did you think you had a  
fiduciary duty to those bondholders?

A. I think I have a fiduciary duty  
to all bondholders, not specifically the  
senior unsecured noteholders.

Q. In terms of your duty -- but  
that duty didn't exclude them, I assume,  
right?

A. Correct. It did not exclude  
them, it would include, them, but.

Q. But you never thought about  
whether this deal was fair, from their  
perspective?

MR. PRINCI: Objection as to  
form, lack of foundation.

A. I never thought about the